

**BEFORE THE ELECTION COMMISSION OF PAKISTAN ISLAMABAD**

**PRESENT:**

MR. SIKANKAR SULTAN RAJA, CHAIRMAN  
MR. NISAR AHMED DURRANI, MEMBER  
MR. SHAH MOHAMMAD JATOI, MEMBER  
MR. BABAR HASSAN BHARWANA, MEMBER,  
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

**Case No. 6 (2)/2018-Cord.(P/F-II)**

In subject: **APPLICATION OF PAKISTAN TEHRIK INSAF FOR ISSUANCE OF NOTIFICATION OF MEMBERS OF PROVINCIAL ASSEMBLY PUNJAB AGAINST RESERVED SEATS FROM THE PRIORITY LIST OF THEIR PARTY.**

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**APPLICATION OF PAKISTAN MUSLIM LEAGUE (N) FOR RE-CALCULATION OF QUOTA OF RESERVED SEATS AFTER THE DISQUALIFICATION OF MEMBERS OF PAKISTAN TEHRIK INSAF UNDER ARTICLE 63 A OF THE CONSTITUTION.**

**&**

**Case No. 6(2)/2018-Cord**

*Sd*  
**APPLICATION FROM MUHAMMAD SABTAIN KHAN, MPA PARLIAMENTARY LEADER OF PTI PUNJAB FOR ISSUANCE OF NOTIFICATION OF NOMINATED MEMBERS OF PAKISTAN TEHREE-E-INSAF FOR RESERVE SEATS FOR WOMEN AND NON-MUSLIMS.**

For the Petitioner No. 1 : Faisal Farid Chaudhry ASC, Rai Muhammad Ali and Syed Muhammad Ali ASC on behalf of PTI

For the Petitioner No. 2 : Khalid Ishaq ASC alongwith Mian Muhammad Faisal Irfan ASC on behalf of PML(N)

For the Petitioner No. 3 : Amir Saeed Rawn, ASC on behalf of PTI

Attorney General for Pakistan : Mr. Ashtar Ausaf Ali, ASC

Advocate General of Punjab : Mr. Shahzad Shoukat, ASC

Date of Hearing : 02-06-2022

**ORDER**

**Mr. Sikankar Sultan Raja, Chairman**— The subject applications involve identical questions of law and facts, therefore we intend to decide the same through this common order.



*2-6-2022*



2. Brief facts leading to the subject controversy are as such that petitioner No.1 Pakistan Tehreek-e-Insaf and petitioner No.2 Pakistan Muslim League (N) participated in the General Election (GE-2018) whereby, the petitioner No.1 (PTI) secured 142 General seats and the petitioner No.2 (PML-N) secured 130 General seats in the election to Provincial Assembly Punjab. The Commission calculated the quota of reserved seats for Women and non-Muslims of all the political parties including the petitioner No 1 & 2. The petitioner No.1 Pakistan Tehreek-e-Insaf (PTI) secured 33 seats reserved for Women and 04 seats reserved for non-Muslims. Whereas the petitioner No.2 (PML-N) secured 30 seats reserved for Women and 04 seats reserved for non-Muslims. It is pertinent to mention here that the General seats included independent candidates who had joined the political Parties within three days in terms of Article 106 of the Constitution. Thereafter seats falling vacant as result of death, resignations or disqualification were filled from the priority lists submitted by the parties in terms of Article 224(6) of the Constitution read with section 104 of the Elections Act, 2017 and Rules 92 to 95 of the Elections Rules, 2017.

3. In the backdrop of recent disqualification of twenty-five (25) legislators including five members of the reserved seats of Punjab Assembly belonging to Pakistan Tehreek-e-Insaf (PTI) on the ground of defection under Article 63-A of the Constitution, a controversy arose as to whether these vacant reserved seats shall be filled from the party list or on the basis of changed strength of the political parties in the assembly. In the wake of disqualification of the aforementioned members, the petitioner No. 1 (PTI) submitted an application for issuance of de-notification of defected members and the notification of reserved seats of their nominees next in their priority list submitted before the Election Commission by PTI in the General Elections 2018. Meanwhile petitioner No. 2 Pakistan Muslim league (N) also submitted an application requesting therein that after the disqualification of twenty (20) MPA's of Pakistan Tehreek-e-Insaf, (PTI), the vacant reserved seats may not be allotted to PTI as their general seats have decreased. The petitioner No. 2 has further prayed that the quota of reserved seats may be recalculated on the basis of available strength of general seats of political parties in the provincial Assembly.



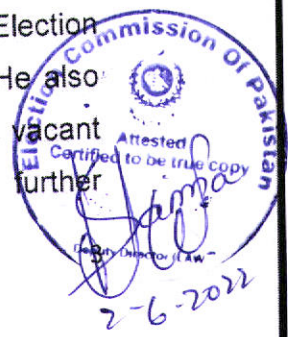


Punjab. Similar application has also been filed by petitioner No. 3 with the same prayer as claimed by petitioner No.1.

4. Notices were issued to all the petitioners for hearing on 2<sup>nd</sup> June 2022. As interpretation of constitutional and legal provisions were involved and being case of first impression, notices were also issued to the Learned Attorney General for Pakistan and Learned Advocate General of Punjab to assist the Commission.

5. It is pertinent to mention here that after filing of the instant application by the petitioner No. 1 before the Commission, the petitioner No. 1 and one Mrs. Zainab Umair wife of Umair Khan Niazi had filed writ Petition No. 32701/2022 and 32781/2022 before the Hon'ble Lahore High Court, Lahore seeking for the same relief. Notice was received by the Commission for appearance and proper representation was made and written report was submitted. As the Commission was already seized of the matter and hearing was also fixed with notices to the parties, the Hon'ble Court was informed accordingly and matter was disposed of with the directions to decide the matter on the date fixed in all circumstances.

6. Today, Mr. Faisal Fareed, ASC, learned counsel for Petitioner No. 1 entered appearance and commenced his arguments. While arguing in support of his application contended that according to Article 106(3)(c) of the Constitution Pakistan the members to fill seats reserved for women and non-Muslims allocated to a province under clause (1) of the Article 106 shall be elected in accordance with law through proportional representation system of political parties lists of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly. He also referred Article 224(6) of the Constitution and submitted that when a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant, on account of death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates to be submitted to the Election Commission by the political party whose member has vacated such seat. He also referred to Article 63-A of the Constitution and argued that seats become vacant after disqualification of the members on grounds of defection. He has further



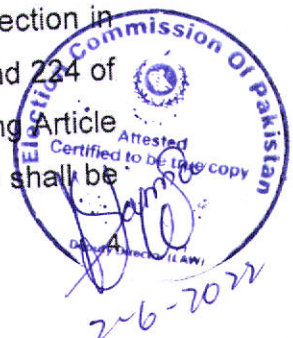


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contended that once the reserved seats are allocated to a political party on the basis of general seats won by a political party it cannot be altered changed or amended at a later stage. While expanding his arguments, he submitted that Section 104 of the Elections Act, 2017 regulates the procedure of election and filling of vacant reserved seats. He submitted that it is the rule of interpretation that if any provision of the subordinate legislation is in the same language as provided in the main law, it shall be considered, however, if the provision of subordinate legislation is not in consonance with the language of the main law, it shall not be considered and ignored. He while drawing distinction between the Elections Act, 2017 and the Constitution submitted that the latter is superior law and the prior is the subordinate/inferior legislation. He further argued that in case of any lacuna in the law or Constitution, it cannot be filled by Courts or by the Commission as the Commission is an executive body and not a Tribunal or a Court and the main duty of the Commission is to perform its functions and to issue a notification as provided in the Constitution and law to fill the vacant reserve seats. He submitted that it is the job of parliament to legislate and amend the law. In support of his arguments he referred the judgments reported as 1992 SCMR 602 and PLD 1995 SC 66. While concluding his arguments he prayed for issuance of notification of the members of reserve seats for women and non-Muslims without further ado from the party list already submitted by the PTI before the Commission.

7. Mr. Amir Saeed Rawn, ASC, learned counsel for the petitioner No. 3 has also entered appearance and adopted the arguments advanced by the counsel for petitioner No. 1. He opted to make his submission in rebuttal of arguments by the counsel for petitioner No. 2.

8. The learned counsel on behalf of petitioner No. 2 Mr. Khalid Ishaq ASC, while controverting the arguments of the learned counsel for the petitioner No. 1, argued that any sub Article or clause of the Constitution cannot be read in isolation. He submitted that two main Articles in the Constitution and one Section in the Elections Act, 2017 deals with the instant matter which are Article 106 and 224 of the Constitution and Section 104 of the Elections Act, 2017. He while referring Article 106 (3) (b) and (c) submitted that the constituencies for the general seats shall be





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single member territorial constituencies and the members to fill such seats shall be elected by direct and free vote, each Province shall be a single constituency for all seats reserved for women and non-Muslims allocated to the respective Provinces under clause (1). The members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly. He also referred clause (1) of Article 106 of Constitution and highlighted that the total number of general seats in the provincial Assembly, Punjab are 297 and 66 seats are reserved for women and 8 seats are reserved for non-Muslim. Out of 371 members of the assembly more than 25 members are not present and the electoral college for the election of reserved seats is not complete. He further contended that the filling of reserve seats has direct nexus with the proportional representation of political party in an assembly and that mechanical filling of vacant seats shall render the scheme of proportional representation redundant and ineffective. He further submitted that this is not the intention of the legislature and redundancy cannot be attributed to the legislature. He further added that Article 224 of the Constitution cannot be read in isolation from Article 106. He argued that the filling of vacant reserve seats is dependent upon availability of general seats of a political party and in case of increase or decrease of the strength of general seats of the political party, the filling of vacant reserved seats cannot be claimed as a matter of right by any political party. In support of his arguments he placed reliance on PLD 2015 SC 401, PLD 2014 SC 531, PLD 2014 SC 1 and added that constitution of a country is a living organism and it should be read as a whole and not in parts. He while concluding his arguments prayed for recalculation of the quota of the reserved seats on the basis of available strength of general seats of the political parties.

9. The learned Attorney General for Pakistan has appeared and submitted that the decision of the instant matter is of national importance and it will have far reaching effect. He submitted that constitution is to be read as a whole and not in parts or isolation. He argued that the question before the Commission for decision is that how the election for reserved seats will take place and what is an



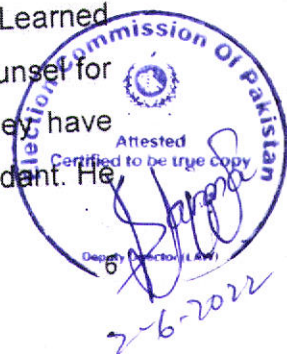


electoral college for election of these members and what would be the circumstances for change in the proportional representation of the parties in an assembly? . In support of these questions he added that the members elected for reserved seats also have some criteria for their selection and addition in the party list. They have to possess certain qualifications. He argued that filling of reserved seats and proportional representation are interlinked. If the number of general seats decreases, then the representation would not become proportionate and it would be dis-proportionate. He added that in the instant matter, PTI has lost its twenty (20) general seats in the Provincial Assembly and automatically has lost the proportional representation required for getting reserved seats in the assembly. He stated that in his opinion the solution to resolve the instant controversy is to conduct bye-elections on twenty vacant general seats and then calculate the quota of reserved seats on the basis of proportional representation of the parties in the assembly.

10. The learned Advocate General Punjab adopted the submissions of the learned Attorney General for Pakistan. In addition to the adopted arguments he has referred Article 106(3(c) and emphasized on the word "in accordance with law". He also referred Rule 94 of the Election Rules, 2017 and submitted that there are two interpretations of the Rule *ibid*. He added that the Commission shall issue the notification in the official Gazette and declare the total number of reserved seats won by each political party in an Assembly and the quota for the reserved seats shall be calculated in accordance with the number of general seats won by each political party. In support of his arguments he referred the judgment 2004 CLC 867 and 2017 YLR 1174 and submitted that electoral college is not complete at present in provincial Assembly Punjab and filling of reserved seats cannot be done in a mechanical fashion and shall be calculated and filled after the result of bye-elections of twenty general vacant seats.

### REBUTTAL

11. While rebutting the arguments advanced by petitioner No.2, Learned Attorney General for Pakistan and Learned Advocate General of Punjab, counsel for petitioner No.1 stated that the crux of the arguments by them are that they have attempted to declare Article 224(6) and Article 106 of the Constitution, redundant. He





further added that their arguments are not backed by any law. He elaborated that the Constitution provides methodology for filling the reserved seats for women and non-Muslim. He submitted that Chapter-VI of the Election Rules, 2017 and Rule 92 to 96 does not empower the Commission to review the earlier quota of reserved seats. He stated that once a declaration regarding quota for reserved seats has been made it cannot be altered, amended or withdrawn at a later stage. He also emphasized that the intention of the legislature was to run the smooth working of the government without any hindrance and Article 106 does not provide any mechanism for review or revision of quota for reserved seats.

12. In rebuttal, Mr. Amir Rawn, counsel for petitioner No. 3 argued that seats in the National and Provincial Assemblies are also mentioned in Section 18 of the Elections Act, 2017. He added that the procedure for election of members against reserved seats is provided in Article 106 and filling of vacant reserved seats is provided in Article 224(6) of the Constitution read with Section 104 of the Act and further read with Rule 92 to 96 of the Election Rules, 2017. He submitted that the august Supreme Court in a recent opinion in Presidential Reference with regard to interpretation of Article 63-A has clearly stated that votes of defector legislators shall not be counted. While concluding his rebuttal, he argued that the constitution and Elections Act, 2017 does not provide for any other mechanism for filling the vacant reserved seats except the procedure provided in Article 224(6).

13. Arguments of the learned counsels, learned Attorney General for Pakistan and learned Advocate General of Punjab heard and record perused.

14. Before dilating upon the complex legal issues, we deem it appropriate to briefly discuss the subject matter in the light of constitutional and legal provisions. The following Articles of the constitution deals with subject matter;

[106. (1) Each Provincial Assembly shall consist of general seats and seats reserved for women and non-Muslims as specified herein below:

	General seats	Women	Non-Muslims
Balochistan	51	11	3



[Khyber	115	26	4	145
Pakhtunkhwa				
The Punjab	297	66	8	371
Sindh	130	29	9	168
(1A) .....				
(1B) .....				
(2) .....				

- (a) .....  
 (b) .....  
 (c) .....  
 (d) .....

(3) For the purpose of election to a Provincial Assembly,—

- (a) .....  
 (b) each Province shall be a single constituency for all seats reserved for women and non-Muslims allocated to the respective Provinces under clause (1);  
 (c) the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly;

15. Article 106 *supra* says that the members to fill reserved seats for women and non-Muslims allocated to a Province shall be elected in accordance with law through proportional representation system of political parties and the lists of candidates provided by them.

16. Article 224 of the constitution provides methodology for filling of vacant reserved seats and has therefore, direct nexus with the subject matter. Which is reproduced for ease of facility;

224. ....]

- [(1A) .....  
 (1B) .....  
 (2) .....  
 (3) .....  
 (4) .....





(5) .....

[(6) When a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant, on account of death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates to be submitted to the Election Commission by the political party whose member has vacated such seat.]

17. Coming now to the statutory provisions dealing with filling of the reserved seats. The law regulating the election of reserved seats and its filling is contained in Section 104 of the Elections Act 2017. Section 104 of the Act is reproduced for ready reference;

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104. **Party lists for reserved seats.**—(1) For the purpose of election to seats reserved for women and non-Muslims in an Assembly, the political parties contesting election for such seats shall, within the period fixed by the Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Commission or, as it may direct, with the Provincial Election Commissioner or other authorized officer of the Commission, who shall forthwith cause such lists to be published for information of the public:

Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers.

(2) .....

(3) .....

(4) .....

(5) Where a seat reserved for women or non-Muslims in an Assembly falls vacant as a result of death, resignation or disqualification of a Member, it shall be filled in by the next person in order of precedence from the party's list of candidates submitted to the Commission under sub-section (1).

(6) .....

(7) .....

(8) .....

18 In view of the arguments of the learned counsels for the parties, learned Attorney General for Pakistan and learned Advocate General of Punjab and



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the constitutional and legal provisions referred hereinabove, the following questions have emerged:

- i. Whether the reserved seats for women and non-Muslims in an Assembly won by each political party on the basis of general seats in a general election are subject to change on account of subsequent increase or decrease of general seats of a political party in an assembly due to death, resignation or disqualification of members of a political party?
- ii. Whether the electoral college in the provincial assembly Punjab is complete for the purpose of filling of vacant reserved seats after the de-notification of twenty members of the assembly?
- iii. Whether the proportional representation mentioned in Article 106(3)(c) will not be defeated if the vacant reserved seats are filled despite change in the strength of general seats of the political parties in the assembly?

**ANSWERS TO QUESTION NO i, ii & iii.**

19. All the three questions are interlinked, therefore requires joint discussion. Article 106 of the Constitution provides mechanism to fill reserved seats for women and non-Muslims allocated to a province under clause (1) of the said Article. Similarly, Section 104 of the Elections Act provides complete mechanism for election to the reserved seats for women and non-Muslims. Generally, individual reserved seat(s) falling vacant on account of death, resignation or disqualification of a member(s) are filled through the next member in order of precedence from the party list as provided under Article 224 of the Constitution. The subject case is of first impression because twenty members from the general seats of a parliamentary party (the petitioner No.1) have been disqualified and they have been de-seated under Article 63-A of the Constitution which has sufficiently reduced the strength of general seats of the petitioner's party in the Punjab assembly. The stance of the learned counsel for the Pakistan Tehreek-e-Insaf is that the quota of reserved seats is calculated once after every general election and is not subject to change subsequently notwithstanding increase or decrease in the strength of general seats of a political party. His next point is that the time frame for calculation of quota only





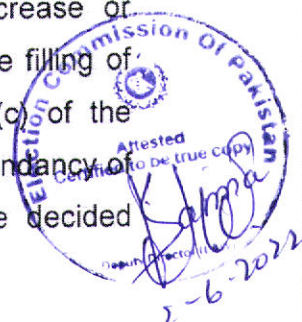
SD after every general election as provided in Article 106, 224 of the Constitution and section 104 of the Act is absolute and subsequent filling of vacant seats in accordance with Article 224 of the constitution is mandatory, notwithstanding increase or decrease in the strength of general seats of a political party. On the other hand, learned counsel for PML-N has strenuously opposed the viewpoint of the opposing counsel and has submitted that procedure for election to the reserved seats and filling of vacant seats has been provided in Article 106, 224 of the constitution and section 104 of the Elections Act. His contention is that the constitution and the Elections Act, 2017 doesn't bar recalculation of quota at a subsequent stage due to increase or decrease of general seats of a parliamentary party in an assembly. It is a matter of record that barring individual cases, no such case of large scale de-seating of members of an assembly and recalculation of quota of reserved seats has cropped up before us. It is settled and established principle of construction and interpretation that no provision of the Constitution or an Act shall be read in an isolation and it should be read as a whole as held in a number of judgments by the august Supreme Court. It has further been held by the august Supreme Court on many occasions that redundancy cannot be attributed to the legislature nor constitutional provisions are to be interpreted to render any of the provision redundant or ineffective. Few such judgments are referred herein PLD 1996 SC 324 "A written Constitution is an organic document designed and intended to cater the need for all times to come. It is like a living tree, it grows and blossoms with the passage of time in order to keep pace with the growth of the country and its people. Thus, the approach, while, interpreting a constitutional provision should be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. The interpretation cannot be a narrow and pedantic." PLD 1997 SC 426, "If two provisions conflict with each other the Courts should first resolve the same by reconciling them. But if reconciliation seems difficult, then such interpretation should be adopted which is more in consonance or nearer to the provisions of Constitution guaranteeing fundamental rights". It has further been held that "the lesser right which must yield in favour of higher rights".

20. In order to resolve the subject controversy and to arrive at correct conclusion we would like to refer to Article 106(3)(c) which clearly defines the mechanism for election on the reserved seats for women and non-Muslim. It has





been specifically mentioned in Article 106(3)(c) that the members to fill seats reserved for women and non-Muslims allocated to a Province shall be elected in accordance with law through proportional representation system of political parties. After disqualification of 20 general members and 5 members on the reserved seats of Pakistan Tehreek-e-Insaf under Article 63-A of the Constitution their seats have become vacant. The proportional representation of political parties, election and filling of reserve seats have close nexus with each other. If the number of seats goes down than proportional representation automatically becomes disproportionate and it would not be fair to fill the vacant reserved seats in any assembly mechanically by narrow and pedantic interpretation of the Constitution which will defeat the clear intention of the constitution as provided in Article 106 (3)(c). The falling vacant of large scale vacancies in the Assembly directly affects the proportional representation of the political parties which is fundamental requirement of the constitution as envisaged in Article 106 *ibid*. Article 224 of the Constitution provides a mechanism for filling of vacancy for the seats reserved for women and non-Muslims on account of death, resignation or disqualification of a member by the next person in order of the precedence from the party list and it does not provide any methodology for filling of vacancies of reserve seats on account of mass scale de-seating of the members of the general seats in an assembly. The narrow interpretation of Article 224(6) as argued by the counsel for the petitioner No. 1 will render Article 106(3)(c) ineffective and the whole scheme of the constitution for election of members of the reserved seats and subsequent filling of the vacancies on the basis of proportional representation would become redundant. In the present facts and circumstances of the subject matter, Article 224(6) is not automatic and is dependent upon strength of general seats of political parties in an assembly. In present scenario, the electoral college of the Punjab Assembly for filling of vacant reserved seats is not complete due to disqualification and subsequent de-seating of twenty members of general seats of Pakistan Tehreek-e-Insaf. In the given circumstance, the increase or decrease in the general seats of political parties has direct nexus with the filling of vacant reserved seats to ensure the implementation of Article 106(3)(c) of the Constitution read with Section 104 of the Elections Act, 2017 to avoid redundancy of constitutional and legal provisions referred hereinabove. Questions are decided accordingly.





21. In view of our question wise discussion and being a case of first impression, we have come to the conclusion that the scheme of proportional representation provided in the constitution is mandatory for filling of vacant reserved seats for women and non-Muslim. Keeping in view the spirit of Article 106 of the constitution we deem it appropriate to defer the filling of vacant reserved seats till the outcome of bye-elections on twenty general seats in the provincial assembly of Punjab. The applications are disposed of in the above terms.

*Sd*  
*Sd*  
(SI. ANDAR SULTAN RAJA)  
Chief Election Commissioner/  
Chairman

(I. SAR AHMED DURRANI)  
Member

(SHAH MOHAMMAD Jatoi)  
Member

(BABAR HASSAN BHARWANA)  
Member

(JUSTICE (R) MIRAM ULLAH KHAN)  
Member

Announced  
2<sup>nd</sup> June, 2022.

